

Foreign exchange regime for the Angolan oil and gas sector

The oil and gas sector is currently Angola's most important source of income and foreign currency. Companies, national and foreign, investing and operating in the oil and gas sector are not subject to the generally applicable foreign exchange regulations. Instead, they used to be subject to specific rules that follow from the concessions under which these companies are operating. This resulted in a variety of rules and procedures that basically apply to the same type of foreign exchange transactions. The Angolan legislator has decided to change this situation and to introduce a foreign exchange regime that applies generally to companies investing and operating in the oil and gas sector.

The new rules are also intended to ensure that a larger part of the income generated by the sector is kept within the country through local banks, thereby strengthening the liquidity of local banks and the national economy.

Therefore, on 29 November 2011, the Angolan Parliament adopted the Law on the foreign exchange regime applicable to the oil and gas sector (*Lei sobre o Regime Cambial aplicável ao sector petrolífero*). The law was promulgated by the Angolan President on 6 January 2012 and published in the *Diário da República* on 13 January 2012 as *Lei no. 2/12 de 13 de Janeiro*; hereinafter, the "Law"). The Law provides that the Angolan National Bank (*Banco Nacional de Angola*; the "BNA") must adopt the procedures and mechanisms that are required for the implementation of the Law and has to define an implementation calendar. It has done so by way of *Aviso No. 20/2012* of 12 April 2012, which was published in the *Diário da República* on 25 April 2012 (the "Aviso") and which is described below. The Law came into force on 13 May 2012.

Key issues

- Exchange transactions
- Accounts
- Settlement of transactions with resident companies
- Retention of foreign currency
- Investments
- Settlement of production requisitioned by the Angolan State
- Registration and budget
- Phased implementation
- Registration obligations

This memorandum describes some important aspects of the Law and the Aviso. It is important to note that the general Angolan foreign exchange regime applies to all matters that are not specifically addressed in the Law.

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Exchange transactions

The Law describes exchange operations as:

- The acquisition and disposal of foreign currency.
- The opening of bank accounts in Angola and transactions through accounts in foreign currency by residents and non-residents.
- The opening of bank accounts in Angola and transactions through accounts in local currency by non-residents.
- The settlement of commercial transactions through current accounts and capital accounts.

As a rule, settlement of foreign exchange transactions by the national concession holder (Sonangol) and its foreign and domestic investment partners (together the "Sector Companies") must be effected through duly authorised financial institutions in Angola.

Furthermore, no set-off of goods transactions, current invisible or capital transactions are permitted without prior authorisation of the BNA.

Accounts

The Law obliges the Sector Companies to open foreign currency accounts with Angolan banks. They must deposit into these accounts the amounts that are required to comply with their general and sectorial tax obligations and for the settlement of goods and services provided by residents and non-residents. The deposits are to be made in instalments on the basis of a calendar prepared by the BNA.

The Sector Companies are obliged to sell part of their foreign currency to the BNA to comply with their tax obligations and use the foreign currency balances to settle goods and services provided by non-residents. The remaining balances can be kept as deposits within the country or abroad and will be subject to the general foreign exchange rules. For the settlement of goods and services provided by residents, the Sector Companies are obliged to open accounts with Angolan banks that are denominated in the local currency, the kwanza.

Resident Sector Companies can distribute, on a periodic basis, their profits or dividends in accordance with their constitutive documents. Non-resident Sector Companies are entitled to keep amounts that are to be distributed as profits or dividends or to be paid by way of amortisation of its investments, with banks outside Angola. Resident Sector Companies must keep these amounts with local banks.

The above rules also apply, broadly on the same basis, to companies that act as operators in the Angolan oil and gas sector ("Operators").

Settlement of transactions with resident companies

Resident Sector Companies must settle transactions with resident service providers or suppliers in kwanza and their contacts should reflect payment in kwanza.¹

Retention of foreign currency

Resident Sector Companies are not allowed to keep foreign currency resulting from current account or capital transactions outside Angola. They may keep amounts abroad for the purpose of making direct payments in connection with export credit and similar transactions that comply with international standards.

Non-resident Sector Companies are not allowed to keep foreign currency required to settle payments for goods and services provided by residents and non-residents outside Angola. They are also not allowed to keep outside Angola the foreign currency required to make tax payments in local currency beyond the time limits described by applicable law.

Investments

The Law further provides that for the financing of capital goods, the Sector Companies must prioritise internal and/or external financing with deferred payment terms.

Non-resident Sector Companies must finance their investments in foreign currency. Local banks are not permitted to extend credit to non-resident Sector Companies without prior authorisation of the BNA, unless the credit is secured by assets held by the Sector Company in Angola.

Sector Companies can open escrow accounts in foreign currency with local and foreign banks (subject to authorisation by the BNA) in order to secure external debt obligations. Amounts in foreign escrow accounts that are no longer required must be repatriated to Angola within eight days.

¹ From a practical point of view this means that if services providers and suppliers are obliged to make payments in foreign currency to their services providers or suppliers, they may want to consider including indexation or clauses with a similar effect clauses in their kwanza denominated contracts.

Settlement of production requisitioned by the Angolan State

The settlement of production requisitioned by the Angolan State must be effected by transferring the relevant amount in foreign currency to an account held with a local bank. Foreign Sector Companies are entitled to repatriate these amounts after complying with their tax obligations.

Registration and budget

The above transactions do not require further authorisation from the BNA,² but details of the foreign exchange transactions must be registered and submitted to the BNA on a regular basis (see below). The Sector Companies are also required to provide a preliminary budget for the following year to the BNA before 30 November of each year. This budget must be updated on a quarterly basis.

Phased implementation

The table below sets out the implementation schedule of the Law, as prescribed by the *Aviso*:

Type of entity		
Dates	Sector Company	Operator
13 May 2013	Deposit of amounts that are due for tax obligations with Angolan bank	
1 October 2012	Payments to suppliers and services providers to be made from accounts held with Angolan banks (local currency and foreign currency)	Payments to resident suppliers and services providers to be made from accounts held with Angolan banks
1 July 2013	Payments to resident suppliers and services providers to be made in kwanza	Payments to resident suppliers and services providers to be made in kwanza
1 October 2013		Payments to non-resident suppliers and services providers to be made from accounts held with Angolan banks

Registration obligations

Aviso No. 20/2012 of 12 April 2012 sets out the registration obligations imposed on Angolan banking institutions, Sector Companies and Operators for foreign exchange control purposes. The specimens of the forms that are to be completed are annexed to the *Aviso*.

■ Financial institutions

- Payments that do not require prior authorisation from the BNA: registration in the SINOC system (Integrated System for Foreign Exchange Operations);
- Payments that require prior authorisation from the BNA: immediate registration in SINOC after the issue of the licence by the BNA.

■ Sector Companies

- On a monthly basis, before the fifth business day after the end of each month: balance of, and movements on escrow accounts, including disbursements and reimbursements of debt in relation to external financing;
- On a quarterly basis, before the tenth business day after the end of each quarter: an overview of all external investment operations.

■ Operators

- On a quarterly basis, before the tenth working day after the end of each quarter: detailed list of all contracts with non residents;
- On a quarterly basis, until the tenth working day after the end of each quarter, and for as long as payments to residents in foreign currency are allowed: detailed list of all contracts with residents that provide for payment in foreign currency.

² Capital transactions in connection with foreign investments by resident Sector Companies do however still require authorisation.

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